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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/762,396	03/16/2001	Rainer Anderlik	49256	3913

7590 06/05/2002
Keil & Weinkauff
1101 Connecticut Ave NW
Washington, DC 20036

EXAMINER

LEVY, NEIL S

ART UNIT	PAPER NUMBER
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1616

DATE MAILED: 06/05/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

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This is a communication from the examiner in charge of your application.
COMMISSIONER OF PATENTS AND TRADEMARKS

OFFICE ACTION SUMMARY

☒ Responsive to communication(s) filed on 5/19/01

☐ This action is FINAL.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 D.C. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

☒ Claim(s) 1-16 is/are pending in the application.

Of the above, claim(s) _____ is/are withdrawn from consideration.

☐ Claim(s) _____ is/are allowed.

☒ Claim(s) 1-16 is/are rejected.

☐ Claim(s) _____ is/are objected to.

☐ Claims _____ are subject to restriction or election requirement.

Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

☒ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☒ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been

☒ received.

☐ received in Application No. (Series Code/Serial Number) _____

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

☐ Notice of Reference Cited, PTO-892

☒ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

- SEE OFFICE ACTION ON THE FOLLOWING PAGES -

Receipt is acknowledged of Declaration, (3/16/01), pre-amendment, (3/15/01) and IDS (5/9/01).

Abstract must be one paragraph.

A substitute specification is required pursuant to 37 CFR 1.125(a) because the claims as filed in preliminary amendment 99/05703 have replaced the 16 claims on pages 17-19, amended sheets of the original submission. Please re-submit the entirety of pages 2-16, as the holes punched through the typing obscure the print.

A substitute specification filed under 37 CFR 1.125(a) must only contain subject matter from the original specification and any previously entered amendment under 37 CFR 1.121. If the substitute specification contains additional subject matter not of record, the substitute specification must be filed under 37 CFR 1.125(b) and must be accompanied by: 1) a statement that the substitute specification contains no new matter; and 2) a marked-up copy showing the amendments to be made via the substitute specification relative to the specification at the time the substitute specification is filed.

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

35 U.S.C. 101 reads as follows:

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Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 10, 12, 15 and 16 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. "use" is non-statutory.

We do not know if an intended use of the articles is the limitation, or if a method, is the claimed limitation. In which case there are no method steps.

Claims 1-9, 11, 13, 14 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

It is unclear what quantification establishes the meets and bounds of the claim "comminuted" and "fine-particle" are or are not the same size, but none is specified (claim 1). "predetermination" is indefinite—by what measure is the determination mode? "rubbery" is indefinite. It is unclear which TG and crosslink, etc: applies to which polymer, 1st or 2nd. It is unclear how allowing to swell or for how long is done or determined. Claim 5 is "at about room temp.; this is indefinite and unclear. The heating max temp. is "not clear". At claim 6, "Roaterial" in claim 6 is not in examiner's experience. Please explain/define. "based on" is indefinite—polymers (last line) is redundant, maybe? The claimed polymers do not further limit the "plastic" of claim 1. Claim 4 has the same problem; the "first" is clearly a polymer, not a plastic. Please check spelling at line 3 of claim 7. Please amend the language to eliminate confusion—Markush language would do so i.e.—the "or else"; claim 6, the "or from", "or of" "and also", provide for confusion. The language permits of multiple interpretation—"polymers" as opposed to polymer-of styrene-acrylic esters are polyesters; --or do we

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mean acrylic esters of styrene? And mixes of what with poly carbonates—polymers of styrene? Of acrylic esters, or of polylactic acid? Please amend/explain. Claim 8—we fail to understand the distinguishing limitation of polymer or plastic. It is unclear what is intended by a “semifinished product”.

Claims 1-9, 11, 13, 14 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. Claims are beyond the scope of the specification—“polymers” and “plastics” are not disclosed as compatible articles, if the 2 polymers differ, as is claimed—only if they are the same is a polymer article disclosed.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) do not apply to the examination of this application as the application being examined was not (1) filed on or after November 29, 2000, or (2) voluntarily published under 35 U.S.C. 122(b). Therefore, this application is examined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

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The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-9, 11, 13, 14 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Kubanek et al GB 2194791.

The instant process is here: a process (column 2, page 1) of mixing a scenting material with a powder carrier of polyethylene, polymers based on starch (cellulose derivatives) then this is mixed with a second plastic (binding agent) of pre-example—styrene-vinyl acetate copolymers. A thermoplastic elastomer, followed by slight heating—by extrusion (thus, pelleting) to produce odorant articles, stored in closed containers (page 2, column 1). Useful are pheromones and oils (page 2, example 1) for defense against animals (insects-eucalyptus oil). Molding compositions are used, if desired (column 2, page 1, lines 90-92). The glass Tg follows from the polymers selected. They are the instant polymers thus of the same Tg.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Neil Levy whose telephone number is 308-2412. The examiner can normally be reached on Tuesday- Friday 7:00 am to 5:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jose Dees can be reached on 308-4628. The fax phone numbers for the organization where this application or proceeding is assigned are 305-4556 for regular communications and 305-3592 for After Final communications.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 308-1235.

Levy: mv
June 4, 2002



NEIL S. LEVY
PRIMARY EXAMINER